BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARIA BOTELLO	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,041,889
WESTERN UNIFORM & TOWEL SERVICE	)	
Respondent	)	
AND	)	
	)	
VIRGINIA SURETY COMPANY, INC.	)	
Insurance Carrier	)	

ORDER

Claimant appealed the February 11, 2009, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleges she sustained personal injury by accident arising out of and in the course of her employment with respondent on September 25, 2006, which was followed by a series of traumas as she continued to work for respondent. Respondent admits claimant sustained the September 25, 2006, accident. But respondent denies claimant sustained the later series of traumas.

In the February 11, 2009, Order, Judge Barnes denied claimant's request for workers compensation benefits after finding that claimant had failed to serve respondent with timely written claim.

Claimant contends the Board should reverse the February 11, 2009, Order because while she was receiving medical treatment she gave her supervisor medical records and work status reports so she would be paid while off work or be given accommodated work. She also alleges she presented respondent with a bill for drug prescriptions that she requested be paid. Accordingly, claimant argues the documents she provided respondent during her medical treatment, which ended January 8, 2007, satisfy the requirement of written claim. In the alternative, claimant argues she was never advised that additional medical treatment would be denied and, therefore, the time period for providing written claim did not begin to run.

Conversely, respondent contends the Board should affirm the February 11, 2009, Order. Respondent maintains claimant's date of accident was September 25, 2006, and that there is insufficient evidence that she sustained repetitive traumas or a series of injuries after that date. Respondent argues that medical bills or other documents that are related to the payment of compensation may not satisfy written claim because it would be illogical. Respondent writes:

> Given that a written claim must be served within two hundred (200) days after the last payment of compensation, it stands to reason that documents that are part and parcel to the payment of compensation cannot themselves be written claims. To hold otherwise would reduce the statute just noted to provide that an injured worker must do a thing within two hundred (200) days of that thing being done. Such an interpretation of the statute is circular and illogical.
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> Claimant's endorsement and negotiation of a temporary total disability compensation check is part and parcel of that form of compensation payment. Similarly, a medical bill is always associated with medical treatment, and thus part and parcel of that form of compensation payment. To find that either a negotiated temporary total disability compensation check or a medical bill serve as a written claim for compensation would be completely inconsistent with the statutory requirement that claimant serve a timely written claim within two hundred (200) days of the payment of compensation.[1]

Next, respondent argues claimant did not intend her work status reports to serve as written claim and respondent had no reason to believe those reports were so intended. And finally, respondent asserts that it was not required to notify claimant that it was discontinuing benefits before the time period for giving written claim began to run as all compensation payments had been suspended and claimant was no longer seeking medical treatment.

The only issue before the Board on this appeal is whether claimant provided respondent with timely written claim for workers compensation benefits.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member finds:

In February 1998, claimant began working for respondent, a uniform and towel service. Claimant testified her job was removing name tags and separating from the production line the items of clothing that needed to go to the shop.

[1] Respondent's Brief at 4 (filed Mar. 23, 2009).

On September 25, 2006, claimant injured herself at work when she fell while she was going down a ladder. Claimant was taken to the hospital by ambulance.

According to claimant, she missed less than two weeks of work and she received workers compensation benefits for that time off work. While undergoing medical treatment, claimant was given several work status reports, which she provided respondent. Claimant testified, through leading questions, that she provided those documents to respondent for job security *and* so respondent would follow her restrictions and pay her while she was off work. What is more, while under medical treatment, claimant received a medical bill, which she believes was for medicine, that she gave to her supervisor.

When claimant recovered sufficiently to return to work, she returned to her regular job. Claimant believes the work she performed after returning to work made her feel worse.[2]

Claimant was released from medical treatment on January 8, 2007, when she was given a permanent 20-pound lifting restriction. She continued to work for respondent until August 18, 2008, when she left for Mexico to care for her father, who had fallen ill. Upon returning to work on September 2, 2008, claimant was terminated for allegedly failing to advise respondent about her trip.

Claimant did not see any doctor for her injuries between January 8, 2007, and when she saw Dr. Pedro A. Murati at her attorney's request on October 16, 2008. Indeed, during that period claimant did not request any medical treatment.

At the February 2009 preliminary hearing, claimant testified she was experiencing symptoms in her right arm, both shoulders, neck and low back, for which she was seeking medical treatment.

Respondent does not dispute that claimant injured herself at work on September 25, 2006, when she fell from a ladder. That accident arose out of and in the course of her employment with respondent. But at this juncture the undersigned agrees with respondent that claimant has failed to prove she sustained repetitive traumas or a series of accidents upon returning to work for respondent following the ladder incident.

The undersigned is aware that Dr. Murati indicated in his October 16, 2008, report that claimant injured herself on September 25, 2006, and every working day afterwards. That report, however, does not address the type of work that claimant performed or how that work allegedly caused the ongoing injury.

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[2] P.H. Trans. at 14.

The undersigned finds claimant's date of accident is September 25, 2006.

CONCLUSIONS OF LAW

The Workers Compensation Act requires injured workers to provide their employers with written claims for compensation within certain time limits. Generally, workers have 200 days of the accident date, last payment of compensation, or last date that medical compensation was provided. K.S.A. 44-520a(a) provides:

> No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

But the period for written claim may be extended to one year when the employer has failed to file a timely accident report as required by K.S.A. 44-557. Subsection (c) of K.S.A. 44-557 provides:

> No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

At this juncture there is neither argument nor evidence that respondent failed to file an accident report. Consequently, claimant's burden is to prove that she provided respondent with written claim within 200 days of the accident or within 200 days of the last date claimant received either medical treatment or disability compensation.

The Kansas Supreme Court has held that written claim is not required to take on any particular form as long as it is a claim. In *Ours*[3] the Kansas Supreme Court wrote:

[3] *Ours v. Lackey*, 213 Kan. 72, Syl. ¶ 2, 515 P.2d 1071 (1973).

> In a workmen's compensation case, the written claim for compensation prescribed by K.S.A. 1972 Supp. 44-520a need not take on any particular form so long as it is in fact a claim. In determining whether or not a written claim was in fact served on the respondent the trial court will examine the various writings and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. On the facts related in the opinion the question is, did the employee have in mind compensation for his injury when the various documents were prepared on his behalf, and did he intend by them to ask his employer to pay compensation?

Moreover, the Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.[4] The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.[5] Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater*,[6] the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The undersigned is unpersuaded that claimant intended the work status reports she provided respondent as a claim for benefits or compensation. But the medical bills she presented respondent are another matter. Claimant testified, in part:

> Q. (Mr. Seiwert) Did you ever get any bills for prescriptions or anything else after you got hurt?
>
> A. (Claimant) Yes.
>
> Q. Do you remember what kind of bill it was you got?
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> A. No, I don't remember.
>
> Q. Okay. Well, was it a doctor bill or a prescription bill or --

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[4] *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

[5] *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

[6] *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

A. I think it was for the medicines.

Q. And what did you do with that bill?

A. I gave them to my supervisor.

Q. Was this while you were under the doctor's treatment?

A. Uh-huh.

Q. And why did you give the bill to your supervisor?

A. Because he told me that all the bills I receive, I had to give them to them so they will be able to pay for them.[7]

That testimony, which is uncontradicted, establishes that claimant provided respondent with medical bills that she expected would be paid. Accordingly, the medical bills submitted to respondent satisfy the requirement of *Ours* that the worker provide the employer with a written document with the intent of requesting the payment of compensation. Here, claimant's submission of the medical bills to respondent clearly evidenced her intent to request their payment.

Claimant's testimony establishes that she provided respondent her unpaid medical bills during that period of time that she was under medical treatment, which would have been sometime before January 8, 2007. Accordingly, the evidence establishes that claimant provided written claim within 200 days of the September 25, 2006, accident.

In conclusion, claimant provided respondent with timely written claim and, therefore, the February 11, 2009, Order should be reversed and this claim remanded to the Judge to address claimant's request for compensation.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[8] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

[7] P.H. Trans. at 14, 15.

[8] K.S.A. 44-534a.

WHEREFORE, the undersigned reverses the February 11, 2009, Order and remands this claim to the Judge for further proceedings to address claimant's request for compensation. The Board does not retain jurisdiction over this claim.

IT IS SO ORDERED.

Dated this ____ day of April, 2009.

KENTON D. WIRTH
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge